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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,354	09/24/2003	Igor Touzov		2353

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IGOR V TOUZOV 212 CRESTONE DRIVE CARY, NC 27513		

EXAMINER	
GORDON, BRIAN R	

ART UNIT	PAPER NUMBER
1743	

MAIL DATE	DELIVERY MODE
09/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/605,354

Applicant(s)

TOUZOV, IGOR

Examiner

Brian R. Gordon

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6-29-07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-105 is/are pending in the application.
- 4a) Of the above claim(s) 1-78, 83-105 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 79-82 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of claims 79-95 in the reply filed on June 29, 2007, is improper and partially responsive.
2. Applicant did not specify if the election is with or without traverse. However, it appears as if applicant attempts to present arguments as to why he considers the restriction improper. Applicant asserts all of the claims of Groups XII-XIV should be examined for all these claims engage coherent light source as a means to propel substance in disclosed method and related devices. The examiner respectfully disagrees. For example, while claim 79 mentions a light source, such source is not positively claimed as an element of the device but more so reflects intended use. As to the method claim of 83, no method steps are clearly defined as to determine how one would perform the process. The claim does not include a transitional phrase. As such, there is no indication where the preamble ends and the actual steps of the process begin. Furthermore there is no requirement that the light sources be employed for liquid propulsion as asserted.

The claims, 79-95, that applicant elects were not defined as a group by the examiner in the previous Office Action. A proper response to a restriction requirement requires applicant to elect a group defined by the examiner. If applicant chooses, the election can be accompanied with arguments as to why other groups should be examined with the elected group. The examiner will review applicant's arguments and if found persuasive combine such groups. Applicant cannot simply combine the groups

by choice and/or redefine the groups in the manner he chooses. In view of such, the examiner hereby assumes applicant's election is directed to Group XII, apparatus claims 79-82.

The requirement is still deemed proper and is therefore made FINAL.

Claim Interpretation

3. The microfluidic device of claim 79 only requires two structural elements (a) at least one microfluidic channel (b) at least one optical fiber in the microfluidic device wherein the fiber is capable of transmitting one milliwatt of light. It should be noted that while the claim does not positively claim a source of light as an element of the device. As such any further references (claims 81-82) to the unclaimed source are not considered further structurally limiting of the device. The recited physical matter is also not positively claimed as an element of the device, but is mention in terms of how one intends to use the device with such matter. The specified matter is not further limiting of the structure.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 79-82 are rejected under 35 U.S.C. 102(e) as being anticipated by Hahn et al. US 7,157,053.

Hahn et al. discloses a microchip (microfluidic device) in which an injected sample is separated while passing through the separation channel 18 and then detected by absorbance detection using a UV lamp, such as deuterium, mercury, tungsten, or xenon lamp, or a kind of laser along with an optical fiber. In the present embodiment, an argon ion laser 208 emitting a wavelength of 488 nm is used as a light source. Light from the argon ion laser 208 is transmitted to the detection cell 1 through the source fiber 109, and the light from the detection cell 1 is transmitted to the detector 211 through the collection fiber 210.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Staats, Sau Lan Tang; Fletcher, Daniel A. et al.; Vann, Charles S. et al.; Hefti, John; Bryning; Zbigniew T. et al.; Eggleton; Benjamin John et al.; Pichon; Dean M. et al.; Kroupenkine; Timofei Nikita et al.; Vann; Charles S. et al.; Burdon; Jeremy W. et al.; Bardell; Ronald et al.; and Walt, David R. et al. disclose devices including an optical fiber.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian R Gordon/
Primary Examiner
Art Unit 1743

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